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Human rights situation in Palestine and other occupied Arab territories

Human rights situation in the Occupied Palestinian Territory, including East Jerusalem*

Report of the Secretary-General

Summary

The present report is submitted pursuant to Human Rights Council resolution 31/34 on the human rights situation in the Occupied Palestinian Territory, including East Jerusalem. It focuses on the recurrence and persistence of human rights violations and the underlying policies leading to such patterns.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is submitted pursuant to resolution 31/34 of the Human Rights Council, in which the Council requested the Secretary-General to report on the implementation of that resolution, with a particular focus on the recurrence and persistence of human rights violations in the Occupied Palestinian Territory and the underlying policies leading to such patterns, including those involving forcible displacement. It covers the period from 1 November 2015 to 31 October 2016. Fifty years after the start of the occupation, the patterns and persistence of human rights violations in the Occupied Palestinian Territory can be seen clearly. The present report provides a non-exhaustive overview of the most pressing human rights violations in the Occupied Palestinian Territory, highlighting the connection with the Israeli occupation. The recommendations encourage all duty bearers to comply with their obligations under international law.

2. Recent reports of the Secretary-General and the United Nations High Commissioner for Human Rights provide a more in-depth analysis of the human rights situation in the Occupied Palestinian Territory.[1]

II. Legal background

3. International human rights law and international humanitarian law are applicable in the Occupied Palestinian Territory, namely Gaza and the West Bank, including East Jerusalem.

4. Israel is a party to most of the core international human rights treaties[2] and ratified the four Geneva Conventions.[3] On 1 April 2014, the State of Palestine acceded to the same core human rights treaties as Israel, as well as to the four Geneva Conventions, their Additional Protocols and the Convention respecting the Laws and Customs of War on Land.[4]

A. International human rights law

5. As a party to most of the core international human rights conventions, the State of Palestine is responsible for implementing its human rights obligations within its jurisdiction. The authorities in Gaza also bear human rights obligations, given their exercise of government-like functions and territorial control.[5]

6. The human rights obligations of Israel within the Occupied Palestinian Territory stem from the jurisdiction and effective control exercised by Israel as the occupying power.

7. The scope of application of international human rights law does not only depend on a State's territorial limits, but also on the exercise of its jurisdiction or effective control, even outside of the State's sovereign territory.[6] Israel has rejected the applicability of its human rights obligations outside its national territory.[7] However, the applicability of its human rights obligations in the Occupied Palestinian Territory (i.e. the West Bank,

[1] See, e.g., A/71/364, A/71/355, A/HRC/34/36 and A/HRC/34/39.

[2] Israel has ratified the International Convention on the Elimination of All Forms of Racial Discrimination, the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights , the Convention on the Rights of the Child, the Convention on the Elimination of All Forms of Discrimination against Women and the Convention on the Rights of Persons with Disabilities.

[3] Israel is not a party to the Convention respecting the Laws and Customs of War on Land nor to the 1977 Protocols Additional to the Geneva Conventions.

[4] See A/HRC/12/37, para. 7, and A/HRC/8/17, para. 8.

[5] See A/HRC/8/17, para. 9.

[6] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134, para. 109.

[7] See, e.g., E/C.12/1/Add.27, para. 8. See also *Legal Consequences of the Construction of a Wall*, para. 112.

including East Jerusalem, and the Gaza Strip) has been continuously asserted in the relevant resolutions of the General Assembly,[8] in reports of the Secretary-General[9] and the United Nations High Commissioner for Human Rights[10] and by various human rights treaty bodies.[11]

8. As the International Court of Justice stated in 2004 that, because Israel exercises territorial jurisdiction over the Occupied Palestinian Territory as the occupying power, it is bound by human rights obligations in respect of the local population.[12] The International Court of Justice also observed that the obligations of Israel under the International Covenant on Economic, Social and Cultural Rights included "an obligation not to raise any obstacle to the exercise of such rights in those fields where competence has been transferred to Palestinian authorities".[13] The accession of the State of Palestine to human rights treaties does not affect the obligations of Israel under human rights law within the Occupied Palestinian Territory.[14]

9. The applicability of human rights law in a situation of armed conflict or occupation concurrently with international humanitarian law has been widely affirmed. The International Court of Justice first addressed that issue in 1996 and then reiterated the concurrent application of international humanitarian law and human rights law in its advisory opinion on the wall, including in respect of the Occupied Palestinian Territory.[15] A situation of armed conflict or occupation does not release a State from its human rights obligations.[16]

B. International humanitarian law

10. The Occupied Palestinian Territory is a territory under belligerent occupation to which international humanitarian law applies. Israel is bound by the obligations of an occupying power set out in the Convention respecting the Laws and Customs of War on Land, the Fourth Geneva Convention and customary international law,[17] as confirmed by numerous international entities.[18] International humanitarian law applies to the entirety of the Occupied Palestinian Territory, in other words to Gaza and the West Bank, including East Jerusalem. East Jerusalem remains an integral part of the West Bank and the Security Council has repeatedly affirmed the continued application of the Fourth Geneva Convention to East Jerusalem.[19]

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[8] See, e.g., General Assembly resolution 71/98.

[9] See A/69/348, para. 5, and A/HRC/28/44, para. 6.

[10] See, e.g., A/HRC/8/17, para. 7, and A/HRC/12/37, paras. 5-6.

[11] See Human Rights Committee general comment No. 31 (2004) on the nature of the general legal obligation imposed on States parties to the International Covenant on Civil and Political Rights, para. 10. See also E/C.12/1/Add.90, para. 31, CCPR/C/ISR/CO/4, para. 5, CRC/C/ISR/CO/2-4, para. 3, CAT/C/ISR/CO/4, para. 11, and CERD/C/ISR/CO/14-16, para. 10.

[12] See *Legal Consequences of the Construction of a Wall*, paras. 110-113.

[13] Ibid., para. 112.

[14] See A/HRC/28/44, para. 6.

[15] See *Legality of the Threat or Use of Nuclear Weapons, Advisory Opinion, I.C.J. Reports 1996*, p. 226, para. 25, and *Legal Consequences of the Construction of a Wall*, para. 106.

[16] See A/HRC/12/37, para. 6.

[17] Although Israel is not a party to the Convention respecting the Laws and Customs of War on Land, the rules contained therein are applicable as they are considered customary law. While Israel has disputed the de jure application of the law of occupation based on an interpretation of article 2 common to the Geneva Conventions (an interpretation that has been rejected by various international entities), it has nevertheless been applying selected provisions of the Fourth Geneva Convention.

[18] See *Legal Consequences of the Construction of a Wall*, para. 101. See also Security Council resolutions 1860 (2009) and 2334 (2016), among others; General Assembly resolutions 62/181 and 63/98, among others; Human Rights Council resolution 10/18, among others; reports of the Secretary-General A/HRC/12/37, para. 9, and A/HRC/8/17, para. 5, among others; and the declaration of 17 December 2014 adopted by the Conference of High Contracting Parties to the Fourth Geneva Convention.

[19] See Security Council resolutions 478 (1980) and 476 (1980) and General Assembly resolutions 70/88 and 71/96.

11. Further norms of international humanitarian law, particularly those relating to the conduct of hostilities, must be respected by all parties to a conflict, including Palestinian armed groups.[20] In particular, all parties to a conflict have to respect the principles of distinction, proportionality and precaution.[21]

12. States parties to the Geneva Conventions have the duty not only to respect the Conventions but also to ensure respect for them.[22] The obligation to ensure respect implies an obligation to take measures to prompt States that have violated the Conventions to act in compliance with international humanitarian law.[23] It is on this obligation that the Security Council, the General Assembly and the majority of States parties to the Geneva Conventions have relied when calling upon third States to react to international humanitarian law violations by Israel.[24]

III. Recurrent violations of international law in the Occupied Palestinian Territory

13. The Palestinian population of the Occupied Palestinian Territory is specifically protected by international humanitarian law.[25] As the occupying power, Israel has the duty to protect the population of the Occupied Palestinian Territory and to uphold public order and safety.[26] That obligation is commonly understood as including an obligation to ensure the welfare and well-being of the local population.[27] Israel bears the obligation to meet the needs of the protected population[28] and to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.[29] It is also under an obligation to treat the protected population humanely, without any discrimination.[30] In all circumstances, it is obliged to respect the fundamental rights of protected persons, that is their right to physical, moral and intellectual integrity.[31] The obligation of Israel, as an occupying power, to protect the Palestinian population is in line with its obligation to respect, protect and fulfil the human rights of the Palestinian population without discrimination.

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[20] Article 3 common to the Geneva Conventions.

[21] International Committee of the Red Cross (ICRC), *Customary International Humanitarian Law (Volume I: Rules)* (Cambridge University Press, 2005), rules 1-3.

[22] Article 1 common to the Geneva Conventions.

[23] See ICRC commentary to article 1 common to the Geneva Conventions, 2016, para. 154 (https://ihl-databases.icrc.org/ihl/full/GCI-commentaryArt1); the declaration of 5 December 2001 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4; *Legal Consequences of the Construction of a Wall*, paras. 158-159; and *Military and Paramilitary Activities in and against Nicaragua (Nicaragua v. United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 14, para. 220.

[24] See, e.g., Security Council resolutions 2334 (2016) and 465 (1980); General Assembly resolution 70/89, paras. 9-10; and the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 4.

[25] Fourth Geneva Convention, art. 4.

[26] Convention respecting the Laws and Customs of War on Land, arts. 43 and 46.

[27] David Kretzmer, "The law of belligerent occupation in the Supreme Court of Israel", *International Review of the Red Cross*, vol. 94, No. 885 (Spring 2012), pp. 216-217.

[28] Fourth Geneva Convention, art. 55 (1) regarding food and medical supplies; see also art. 56 regarding the duty to ensure and maintain medical services and art. 50 regarding the duty to facilitate the proper working of education institutions.

[29] Fourth Geneva Convention, art. 59, and ICRC, *Customary International Humanitarian Law*, rule 55. As consent of the occupying power remains necessary, it cannot be withheld on grounds other than those set out in article 59 of the Fourth Geneva Convention.

[30] Fourth Geneva Convention, art. 27.

[31] Ibid., and ICRC 1958 commentary to article 27 of the Fourth Geneva Convention, p. 201.

A. Violations of the obligations of the occupying power

14. In the Occupied Palestinian Territory, Israel disregards the law of occupation and its obligations as an occupying power. The law of occupation is guided by the principle that the *status quo ante* has to be preserved as far as possible within the occupied territory.[32]

15. A central violation of the law of occupation in the present context is the construction and expansion of Israeli settlements in the West Bank. The continued expansion of settlements not only undermines the possibility of a two-State solution, but is also at the core of many human rights violations in the West Bank.[33]

1. Settlement expansion in the West Bank

16. Since the early years of the occupation, Israel has pursued a policy of establishing illegal settlements in the Occupied Palestinian Territory.[34] With a current total settler population of at least 590,000 in the West Bank (around 386,000 in some 130 settlements in Area C and 208,000 in East Jerusalem), the population of settlements has more than doubled since the beginning of the Oslo process in 1993.[35] In addition, approximately 100 illegal outposts have been built without the formal approval of the Government of Israel in Area C and efforts under way in Israel to legalize some of them.[36]

17. Besides allocating land for the purposes of constructing settlement housing and infrastructure, Israel supports the maintenance and development of settlements through the delivery of public services and the encouragement of economic activities, including agriculture and industry. Population growth in Israeli settlements is stimulated by housing, education and tax benefits. Similar incentives are provided for settlement industries.[37] The development of archaeological sites, national parks and other tourist sites aimed at attracting Israelis further contributes to settlement growth and Israeli control of land in the West Bank, including East Jerusalem.[38]

18. Moreover, Israel supports outposts considered illegal under its domestic law and other unauthorized constructions through the provision of funds, infrastructure and security.[39] Settlement expansion is also compounded by the failure of Israel to maintain public order and ensure accountability for harassment and violence perpetrated by Israeli settlers.

19. Settlements amount to the transfer of a State's population to the territory it occupies, which is prohibited by international humanitarian law.[40] Any act that would facilitate population transfer is also prohibited under international humanitarian law.[41] Such transfer stands in violation of the Fourth Geneva Convention and is recognized as a war crime that may lead to individual criminal responsibility.[42] The illegality of settlements under international law has been confirmed by various international bodies, including the International Court of Justice, the Security Council, the General Assembly and the Human Rights Council.[43]

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[32] ICRC, "Contemporary challenges to IHL — Occupation: Overview", June 2012.
[33] See A/HRC/34/39 and A/71/355, para. 34.
[34] See S/13450 and Corr.1 and 2.
[35] Report of the Middle East Quartet of July 2016, p. 4. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.
[36] Ibid., p. 5. See also A/HRC/34/39, para. 33, and A/71/355, paras. 10-14.
[37] See A/68/513, para. 24, A/71/355, para. 4, and A/HRC/22/63, paras. 19, 22 and 97.
[38] See A/69/348, paras. 33-35, A/70/351, paras. 33-36, and A/71/355, para. 4.
[39] See A/68/513, paras. 15-16, and Talya Sason, "Summary of the opinion concerning unauthorized outposts" (10 March 2005).
[40] Fourth Geneva Convention, art. 49 (6).
[41] ICRC, 1958 commentary to article 49 (6) of the Fourth Geneva Convention, p. 283.
[42] Fourth Geneva Convention, art. 147, and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).
[43] See *Legal Consequences of the Construction of a Wall*, para. 120; Security Council resolutions 2334 (2016) and 465 (1980); General Assembly resolution 70/89 and Human Rights Council resolution

20. In addition, settlements and related activities have repercussions on human rights. The ongoing expansion of settlements severely impedes the exercise by the Palestinian people of their right to self-determination and seriously deprives them of natural resources.[44]

2. Unlawful seizure and destruction of property

21. As set out in the Fourth Geneva Convention, the occupying power must administer public property according to the rules of usufruct. The occupying power can thus use and enjoy public property as long as doing so does not alter its character.[45] Private property must be respected and cannot be confiscated;[46] the destruction of property by the occupying power is expressly prohibited by international humanitarian law.[47] The seizure of property, as well as the demolition of Palestinian houses, infrastructure and orchards, in order to establish, develop and maintain settlements and provide access to the latter, are flagrant violations of the rules of usufruct.

22. Exceptions to the rules are only permitted if those rules specifically provide for them. In the absence of active hostilities in the West Bank, any exception to the rule prohibiting the alteration or destruction of private and public property appears difficult to invoke. [48]

3. Demolitions and forcible transfer of Palestinians in the West Bank

23. International humanitarian law not only prohibits the transfer of the population of the occupying State into the occupied territory, but also individual or mass forcible transfer or deportation of the population of an occupied territory regardless of the motive.[49] Such transfer amounts to a grave breach of the Geneva Conventions and is also considered a war crime.[50]

24. Over the years, the Secretary-General has reported on cases where the forcible transfer of Palestinians may have taken place within the West Bank and on the situation of individuals and communities at risk of forcible transfer, primarily Bedouins and other herder communities within Area C of the West Bank. Cases of forcible transfer are generally documented after the demolition of homes and infrastructure that leads to forced evictions,[51] in violation of international humanitarian law and international human rights law.[52]

25. Having destroyed or seized 986 structures between 1 January and 31 October 2016 (more than twice for the number compared with the same period in 2015), in 2016 the Israeli authorities demolished more Palestinian-owned structures in the West Bank, including East Jerusalem, than in any year since 2009, when the United Nations began to monitor the issue systematically. The majority of demolitions affected vulnerable Palestinian Bedouin and herding communities. Overall, 1,596 Palestinians were displaced in 2016, including 759 children, and 6,398 others were affected, including 2,007 children, by the demolition of residential and livelihood-related structures. According to the Office for the Coordination of Humanitarian Affairs of the Secretariat, official data released by the

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31/36, and earlier resolutions; and the declaration of 17 December 2014 of the Conference of High Contracting Parties to the Fourth Geneva Convention, para. 8.

[44] See *Legal Consequences of the Construction of a Wall*, para. 122; General Assembly resolution 71/247; and A/HRC/22/63, para. 38.

[45] Convention respecting the Laws and Customs of War on Land, art. 55, Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[46] Convention respecting the Laws and Customs of War on Land, arts. 46 and 56, Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[47] Fourth Geneva Convention, art. 53, and ICRC, *Customary International Humanitarian Law*, rule 51.

[48] ICRC, 1958 commentary to article 53 of the Fourth Geneva Convention, p. 302.

[49] See the Fourth Geneva Convention, art. 49 (2), for exceptions.

[50] Fourth Geneva Convention, art. 147, and Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

[51] See, e.g., A/HRC/25/40, paras. 18-21, A/69/347, para. 26, and A/67/372, paras. 36-37.

[52] Fourth Geneva Convention, art. 53; International Covenant on Economic, Social and Cultural Rights, art. 11; and International Covenant on Civil and Political Rights, art. 17.

Israeli authorities indicates that over 11,000 demolition orders in Area C were outstanding as of 2014, concerning an estimated 17,000 Palestinian-owned structures.[53]

26. Most structures have been demolished because of the absence of building permits issued by the Israeli authorities, which are almost impossible for Palestinians to obtain. In previous reports, it has been noted that the Israeli zoning and planning policy in the West Bank, which regulates the construction of housing and structures in Area C, is restrictive, discriminatory and incompatible with requirements under international law.[54] Provided that international humanitarian law is otherwise respected,[55] territorial planning has to be undertaken to enhance the life of the protected population, which is not the case in the present situation. The implementation of the zoning and planning regime cannot be invoked by Israel to justify any violation of international law.

27. The destruction of donor-funded humanitarian assistance to vulnerable communities spiked in 2016, when 292 donor-funded structures were demolished or seized by the Israeli authorities in Area C — a rate over 165 per cent higher than in 2015. Affected relief items included shelters and tents, water cisterns, animal barracks and other basic structures needed for survival and to gain a livelihood. Such actions are irreconcilable with the occupying power's obligations to allow and facilitate humanitarian access for civilians in need.[56]

28. Forcible transfer does not necessarily require the use of physical force by the authorities but may be triggered by specific circumstances that leave individuals or communities with no choice but to leave. The existence of such circumstances constitutes what is known as a coercive environment.[57] Any transfer that occurs without the genuine and fully informed consent of those affected is considered forcible. However, genuine consent to a transfer cannot be presumed in an environment marked by the use or threat of physical force, coercion, fear of violence or duress.[58]

29. Palestinians have been forced to move owing to the existence of a coercive environment within Area C of the West Bank[59] and the area of the city of Hebron under Israeli control (H2).[60] Coercive factors such as home seizures and demolitions leading to forced evictions, movement and access restrictions, instances of excessive use of force by Israeli security forces and settler violence have also been reported in East Jerusalem.[61] Forcible transfers have also been documented following the revocation of residency permits in East Jerusalem,[62] as well as the transfer of Palestinian detainees to Israeli prisons.[63] Human rights violations, for example of the rights to freedom of movement, privacy and

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[53] Office for the Coordination of Humanitarian Affairs, official data on demolition orders in Area C. Available from http://data.ochaopt.org/demolitions.aspx.

[54] See A/HRC/31/43, para. 45, referring to A/HRC/25/38, paras. 11-20; see also A/68/513, paras. 30-34. The implementation of the Israeli planning and zoning regime is problematic with regard to the prohibition of discrimination enshrined in human rights law and the right to adequate housing (International Covenant on Economic, Social and Cultural Rights, art. 11), including the prohibition on forced evictions and on unlawful or arbitrary interference with privacy, family and home (Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions, para. 3).

[55] In particular, the Israeli planning and zoning regime may violate the obligation of the occupying power under international humanitarian law to ensure public order and safety while respecting the laws in force in the occupied territory (Convention respecting the Laws and Customs of War on Land, art. 43).

[56] Fourth Geneva Convention, art. 59; see also ICRC, *Customary International Humanitarian Law*, rule 55.

[57] See A/HRC/34/39, paras. 40-57.

[58] See A/67/372, para. 37, and A/HRC/24/30, para. 29.

[59] See A/HRC/31/43, para. 46, A/69/348, para. 16, and A/67/372, para. 37.

[60] See A/71/355, paras. 25-64.

[61] See A/70/351, paras. 25-51, and A/HRC/16/71, paras. 20-22.

[62] See A/67/372, para. 39, and A/HRC/16/71, paras. 23-24.

[63] Fourth Geneva Convention, art. 78. The transfer of prisoners into the territory of the occupying power is forbidden by article 76.

family life,[64] as well of a range of economic, social, and cultural rights,[65] may also be violated within the context of forcible transfers.

4. Collective punishment

30. In June 2007, following the takeover of Gaza by Hamas, and in the context of continued attacks emanating from Gaza against Israeli civilian targets, Israel significantly tightened restrictions on movement by land to and from the Gaza Strip, adding to the prohibition of any access by air or sea since 1967. Despite a gradual easing of some restrictions since 2010, Israel continues to maintain a tight closure policy,[66] leaving 1.9 million Palestinians locked in Gaza, largely unable to access the West Bank, including East Jerusalem, and the outside world. The impact of that blockade is exacerbated by the almost continuous closure by Egypt of the Rafah passenger crossing (despite some loosening of restrictions over the past year) and by the increasing refusal by Jordan to grant passage to Palestinians from Gaza through the Allenby crossing.[67]

31. The closures imposed on Gaza are contrary to international law and may amount to collective punishment, as it penalizes the entire population without regard to individual responsibility.[68] It has a serious impact on the right to freedom of movement and on economic, social and cultural rights.

32. Following an attack against Israelis, the Israeli authorities frequently employ measures that may amount to collective punishment that affect the members of the family or the community of the attackers or alleged attackers.[69] The use of such measures has increased during the past three years in a context of heightened violence. Among the measures used are the following: punitive demolitions, the cancellation of travel and work permits and other administrative actions, the withholding of bodies and the closure of Palestinian towns and villages.[70]

33. Collective punishment is expressly prohibited by international humanitarian law.[71] That prohibition does not apply only to criminal sanctions but also to harassment of any sort, including administrative measures, carried out by the police or the military.[72] Several human rights are negatively affected by such practices, including the right to a fair trial and other due process guarantees, including the principle of individual responsibility and the presumption of innocence.[73]

5. Settler harassment and violence, and impunity

34. Settler harassment and violence against Palestinians, and the failure of Israel to ensure that perpetrators are held accountable, has been an ongoing issue in the Occupied Palestinian Territory.[74] Such instances include verbal harassment, physical attacks causing

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[64] International Covenant on Civil and Political Rights, arts. 12 and 17.

[65] See A/HRC/16/71, para. 24.

[66] The term "blockade" is used here to describe the imposition by Israel of prolonged closures and economic and movement restrictions in the Gaza Strip (see A/71/364, para. 5, A/HRC/24/30, paras. 21-23, A/69/347, paras. 30-34, and General Assembly resolution 69/93).

[67] See A/71/364, para. 28.

[68] See A/HRC/31/40, para. 36, and A/HRC/24/30, para. 22, with references.

[69] A/HRC/34/36 and A/HRC/31/40.

[70] See A/71/364, paras. 25-26, A/HRC/34/36, paras. 31-33, and A/HRC/31/40, paras. 29-33. See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=20082&LangID=E.

[71] Convention respecting the Laws and Customs of War on Land, art. 50, and Fourth Geneva Convention, art. 33.

[72] ICRC, *Customary International Humanitarian Law*, commentary to rule 103.

[73] International Covenant on Civil and Political Rights, arts. 11-12, 14 and 17. See also the Fourth Geneva Convention, arts. 71-73.

[74] E.g., A/71/355 and A/HRC/31/42, among numerous previous reports. See also Talya Sason, "Summary of the opinion concerning unauthorized outposts".

casualties and damage to or destruction of Palestinian property, with Palestinian-owned trees (mainly olive trees) being specifically targeted.[75]

35. The phenomenon has been directly linked to the continued existence and expansion of illegal settlements throughout the West Bank. Documented cases of settler attacks, trespassing and forceful takeover of land suggest that violence is often carried out as part of an effort by settlers to push Palestinian farmers off their land.[76]

36. As the occupying power, Israel is obliged to uphold public order and safety within the Occupied Palestinian Territory and to protect its inhabitants, notably from all acts of violence, threats and insults.[77] Harassment and violence by settlers impedes the enjoyment of numerous human rights by the affected Palestinian population, including the right to life and physical integrity, the right to privacy, family and home and the right to an adequate standard of living.[78]

37. Under its duty to respect, protect and fulfil the human rights of all individuals within its jurisdiction, without any discrimination, Israel has the obligation to exercise due diligence to prevent, investigate, prosecute, punish and remedy any harm sustained by Palestinians, whether it is caused by officials or private persons.[79]

38. Moreover, Israel should do its utmost to ensure prompt and effective investigations into alleged violations and to prosecute suspected perpetrators.[80] However, it is very rare that police complaints filed by Palestinians in the West Bank lead to an investigation, let alone an indictment.[81] The Israeli authorities have recently made efforts to address the issue of settler violence, including through intensified law enforcement activity and the increased presence of elements of the Israel Defense Forces.[82] These measures have been linked to a steady decline in recorded incidents of settler violence over the past three years. That trend nevertheless is in contrast with the exceptional violence of some of the attacks committed in 2015.[83]

6. Application of Israeli law in the West Bank

39. In the West Bank, Israeli domestic law is applied extraterritorially to Israeli settlers, while Palestinians are subject to Israeli military law in addition to the Palestinian legal system. The resulting differentiation is particularly problematic as regards criminal matters.[84] While Israeli settlers are tried under Israeli penal law in civilian courts in Israel, Palestinians are prosecuted under Israeli military law for security offences and other crimes as defined by military orders. It is notable that Israeli domestic law provides more procedural guarantees to suspects and defendants than Israeli military law does for the same offence.[85]

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[75] Office for the Coordination of Humanitarian Affairs, "Israeli settler violence in the West Bank", November 2011.

[76] See A/69/348, para. 39. See also Yesh Din, *The Road to Dispossession: a Case Study -- the Outpost of Adei Ad* (February 2013), and Kerem Navot, *Israeli Settler Agriculture as a Means of Land Takeover in the West Bank*, (August 2013).

[77] Fourth Geneva Convention, art. 27 (1), and Convention respecting the Laws and Customs of War on Land, art. 46.

[78] See, e.g., International Covenant on Civil and Political Rights, arts. 7 and 17, International Covenant on Economic, Social and Cultural Rights, art. 11, and International Convention on the Elimination of All Forms of Racial Discrimination, art. 5.

[79] See *Legal Consequences of the Construction of a Wall*, para. 110, CCPR/CO/78/ISR, para. 11, and Committee on Civil and Political Rights general comment No. 31, para. 8.

[80] See A/71/355, para. 19, and A/HRC/25/38, paras. 42-43.

[81] Yesh Din, "Law enforcement on Israeli civilians in the West Bank", data sheet, October 2015 (referred to in A/71/355, para. 19).

[82] See A/71/355, para. 20, and A/HRC/31/43, paras. 40-43.

[83] See A/HRC/34/39 and A/71/355, para. 18.

[84] See A/HRC/28/44, para. 53, and A/HRC/22/63, paras. 41 and 46.

[85] Differences notably pertain to the authority to arrest, the maximum period of detention before being brought before a judge, the right to meet with an attorney, protections for defendants during trial, maximum punishment and release before sentence completion. Israeli military law also provides for additional offences that are not part of Israeli criminal legislation, such as stone-throwing or

40. The application of two different legal systems in the same territory, on the sole basis of nationality or origin, is inherently discriminatory.[86] It also violates the principle of equality before the law, which is central to the right to a fair trial.[87] The application of Israeli domestic law to settlers and of Israeli military law to Palestinians in the West Bank also raises concerns regarding the obligation of the occupying power to respect the laws in force in the territory it occupies, unless it is absolutely prevented from doing so.[88]

B. Obligations of all parties related to the conduct of hostilities

41. Since 2007, there have been three major escalations in Gaza, which have resulted in 3,808 Palestinian fatalities, including 928 children.[89] During the most recent escalation of hostilities, in July and August 2014, 1,460 civilians, including 556 children, were killed, and 82 hospitals and 295 schools were either destroyed or damaged. In total, 90 Israelis, including 11 civilians, were killed.[90]

42. More than two years after the 2014 escalation of hostilities, serious concerns persist concerning the lack of accountability by the Israeli and Palestinian authorities with regard to alleged violations of international humanitarian law, including alleged war crimes, and violations and abuses of international human rights law. No meaningful investigation has been announced by the Palestinian authorities so far.[91] A high number of cases involving the Israel Defense Forces will not be subject to criminal investigation as they were closed by the Office of the Israeli Military Advocate General for lack of reasonable grounds for suspicion of criminal behaviour, despite serious allegations.[92] When investigations are opened, concerns remain as to whether they meet human rights standards, especially in view of the small number and the low rank of alleged perpetrators that are eventually brought to justice, facing mainly lenient indictments and sentences.[93] As for civil remedies, victims have no prospect for compensation either.[94] This overall lack of accountability contributes to fuelling the conflict.

C. Further recurrent human rights violations in the Occupied Palestinian Territory

Impunity as a driver of violations

43. Despite various measures taken by Israel to address impunity,[95] the failure to ensure accountability creates an environment of impunity where victims and families have little or no redress, which may encourage further abuses on all sides.

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assaulting a soldier. See Association for Civil Rights in Israel, *One Rule, Two Legal Systems: Israel's Regime of Laws in the West Bank* (November 2014) and B'Tselem, "Dual system of law", 1 January 2011.

[86] International Covenant on Civil and Political Rights, art. 2.

[87] Ibid., art. 14.

[88] Convention respecting the Laws and Customs of War on Land, art. 43, and Fourth Geneva Convention, art. 64. The possible passage of a bill in the Knesset that would enable the retroactive legalization of outposts built on Palestinian-owned land is of additional concern, as it would be the first time that the Knesset enacts legislation to be specifically applied in the West Bank.

[89] Figures from the Office for the Coordination of Humanitarian Affairs.

[90] A Thai national was also killed.

[91] The report of the Palestinian Independent National Committee established to follow up on the recommendations addressed to the Palestinian Authority by the independent commission of inquiry established pursuant to Human Rights Council resolution S-21/1 (see A/HRC/29/52) was reportedly handed over to the Palestinian President on 8 January 2017.

[92] Israel Defense Forces, "Decisions regarding exceptional incidents that occurred during Operation Protective Edge". See A/71/364, paras. 38-41.

[93] See A/71/364, para. 40.

[94] Ibid., paras. 56-57.

[95] See CAT/C/ISR/5 and A/71/364, paras. 61-63.

44. Ensuring accountability for violations committed by all parties would be key to breaking the cycle of violence.[96] Few Israeli security personnel are indicted for their actions. Incitement to violence remains an issue. Palestinians who commit attacks against Israelis are glorified by parts of the population and representatives of ruling parties.[97]

Excessive use of force by law enforcement officials

45. Since September 2015, there has been a new escalation of violence in the West Bank, with attacks committed by Palestinians against Israelis. In that context, there appears to have also been a sharp increase in incidents of excessive use of force, both in the context of clashes and in response to attacks or alleged attacks by Palestinians against Israelis.[98] In many instances, it appears that Israeli security forces do not make use of firearms against Palestinians only as a last resort, even where there is no imminent threat to life or of serious injury.[99] Similar concerns of unlawful killings arise in the context of the access-restricted areas in Gaza (where elements of the Israel Defense Forces routinely use firearms against bystanders and protestors), along the Israel-Gaza fence and at sea against small fishing vessels.[100]

46. Such use of firearms and the large number of resulting casualties raise serious questions as to whether the rules of engagement of the Israel Defense Forces comply with international law, whether they are properly implemented and respected and whether appropriate sanctions are imposed for non-compliance.

47. In law enforcement operations, the use of lethal force has to be limited to situations when it is strictly necessary and in accordance with the principle of proportionality. It should be restricted to situations of last resort, i.e. as a response to an imminent threat of death or serious injury.[101] Use of force that does not comply with those principles and results in the death of the suspect amounts to an arbitrary deprivation of life.[102] Under international humanitarian law, this may constitute an act of wilful killing.[103]

48. The Secretary-General has expressed serious concern regarding the excessive use of force and unlawful killings by the Israeli security forces, including apparent extrajudicial executions.[104] Concerns remain regarding accountability in law enforcement operations.[105] Since the escalation of violence in September 2015, only one case has led to an indictment and subsequent conviction, despite the fact that, as at 31 October 2016, 169 Palestinians were killed by Israeli security forces following an attack or alleged attack.[106]

Torture and ill-treatment in detention

49. Allegations of ill-treatment and torture of Palestinian detainees have been regularly reported over the years.[107] These occur largely during arrests, transfers and interrogations, particularly by the Israel Security Agency. Common forms of ill-treatment include sleep deprivation, placement in stress positions, sexual harassment and physical assault. In 2015, The Public Committee against Torture in Israel documented 38 complaints of torture in Israeli detention facilities.[108] The United Nations Children's Fund (UNICEF) and partner

[96] See A/71/364, para. 71.
[97] Report of the Middle East Quartet, p. 3.
[98] See A/HRC/31/40.
[99] See A/71/364, paras. 8-10, and A/71/355, paras. 38-43.
[100] See A/70/421, paras. 30-38, and A/71/364, paras. 13-15.
[101] Code of Conduct for Law Enforcement Officials, arts. 2-3, and Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, principles 5, 9 and 13-14.
[102] International Covenant on Civil and Political Rights, art. 6.
[103] Fourth Geneva Convention, art. 147.
[104] See A/71/355, para. 43, A/71/364, paras. 8-9, and A/HRC/31/40, paras. 10-15.
[105] See A/71/364, paras. 42-50.
[106] See A/71/355, para. 45, and A/71/364, para. 45. Elor Azaria was convicted for manslaughter on 4 January 2017; as at the time of writing, it was not clear whether there will be an appeal to the judgment.
[107] A/HRC/28/80, A/HRC/31/40 and A/71/364.
[108] Update provided by the Public Committee against Torture in Israel.

organizations also documented 58 cases of West Bank children reporting ill-treatment by Israeli security forces in 2015.[109]

50. International human rights law prohibits torture or cruel, inhuman or degrading treatment or punishment.[110] That prohibition is absolute and there cannot be any derogation from it, not even in a situation of armed conflict.[111] The occupied population is also specifically protected by international humanitarian law.[112]

51. Israeli law does not specifically prohibit, define or criminalize torture.[113] Despite improvements, for instance with the creation of semi-independent accountability mechanisms, the "necessity defence" is commonly invoked to prevent any criminal investigations.[114] The number of complaints of torture or ill-treatment involving the Israel Security Agency has quadrupled since June 2013, but not a single complaint has led to a criminal investigation.[115] Israel views the presentation of such complaints as a method to burden and hinder its security agencies in their ongoing fight against terrorism.[116]

52. The Office of the United Nations High Commissioner for Human Rights (OHCHR) has consistently received and documented reliable allegations of torture and ill-treatment of Palestinian detainees in the West Bank and in Gaza, including cases that have led to death.[117] In the West Bank, political opponents and activists, including students perceived to be linked to Hamas and the Palestinian Islamic Jihad, appear to be particularly targeted by the Palestinian Authority.[118] In Gaza, the ruling authorities and armed groups have reportedly resorted to such practices.[119] Credible investigations into allegations are rare.

Administrative and arbitrary detention

53. Since 2014, the number of Palestinians in detention has significantly increased; detainees have no prospect of charge or trial. As at 31 October 2016, it was reported that 720 Palestinians were being held in Israeli administrative detention,[120] after their number had peaked at 750 earlier in 2016, the highest number since early 2008.[121] Some administrative detainees have resorted to hunger strikes to protest their detention.[122] In July 2015, the Israeli prisons act was amended, allowing judges to authorize the forced feeding of a detainee on hunger strike.[123] Forced feeding has been qualified by human rights experts as being tantamount to cruel, inhuman or degrading treatment, and a violation of the right to health.[124]

54. OHCHR has also documented a growing use of administrative detention by Palestinian security forces, in some cases on the basis of orders issued by provincial governors, or simply to justify delays in bringing the accused before a judge.[125] In Gaza, the authorities have resorted to arbitrary detention against perceived political opponents,

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[109] See A/HRC/31/40, para. 47.
[110] International Covenant on Civil and Political Rights, art. 7.
[111] Ibid., art. 4.
[112] Fourth Geneva Convention, arts. 27 and 32.
[113] See CAT/C/ISR/CO/5, paras. 12-13, and A/71/364, paras. 41 and 59.
[114] See A/71/364, para. 59 (with references).
[115] Ibid., para 60.
[116] See CAT/C/ISR/5, para. 11.
[117] See A/HRC/31/40, paras. 60-62, and A/HRC/34/36.
[118] See A/HRC/31/40, para. 61, and A/HRC/34/36.
[119] A/HRC/34/36.
[120] See www.addameer.org/statistics. Three Jewish-Israeli men were also held in administrative detention in 2015.
[121] See www.addameer.org/statistics/20160730 and www.btselem.org/administrative_detention/statistics.
[122] See A/HRC/31/40, para. 44, and A/HRC/34/36, paras. 21-22.
[123] See A/HRC/31/40, para. 45.
[124] Joint statement of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment and the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health, available from www.ohchr.org/RU/NewsEvents/Pages/DisplayNews.aspx?NewsID=16269&LangID=E.
[125] See A/HRC/31/40, para. 58.

including members of Fatah and former personnel of the Palestinian Authority, with cases of incommunicado detention reported, including by armed groups.[126]

55. Human rights law guarantees to everyone the right to liberty and security. This implies that no one shall be subject to arbitrary arrest or detention, and that any deprivation of liberty should occur on the basis of legal grounds and follow strict procedures as established by law.[127] Detainees should be promptly charged or released. Administrative detention is only permitted in exceptional circumstances and should never be used as an alternative to criminal proceedings.[128] Stringent safeguards should be applied to prevent arbitrary detention, including basic procedural guarantees, such as the rights to be informed promptly and fully of the reasons for the detention, to take proceedings before a court, to challenge the legal basis of the detention and to be presumed innocent. Breaches should give rise to compensation.[129]

56. The way that Israel makes use of administrative detention often leads to indefinite detention without charge. Hearings for administrative detainees are often conducted in closed session, with detainees regularly held on the basis of secret evidence to which neither they nor their lawyers are given access. That practice has been widely condemned, including by the Secretary-General, the United Nations High Commissioner for Human Rights and the Human Rights Committee, all of whom have called for its end.[130] In addition, such practice is inconsistent with the exceptional nature of detention provided by international humanitarian law.[131] Most administrative detainees are held in Israel, in violation of the prohibition of forcible transfer.[132]

Arrest and detention of children

57. Each year hundreds of Palestinian children, some as young as 12 years of age, are arrested and prosecuted in the Israeli military court system. Charges usually involve stone-throwing and, more recently, incitement to violence based on social media posts.

58. The number of children in detention has more than doubled in the past year.[133] The peak figure of 440 children held in Israeli detention at the end of February 2016 was the highest number of detained children since January 2008.[134] Administrative detention of children resumed in October 2015, a practice not seen since December 2011.[135] There are concerns as to whether child detention is being used as a measure of last resort and for the shortest appropriate period, as required by human rights law.[136]

59. The fact that Israeli military law applicable in the West Bank permits the detention of Palestinian children from the age of 12 years is at odds with the specific protection granted to children as members of a particularly vulnerable group and the general rule that any decision affecting them must have their best interest as a primary consideration.[137]

60. A number of legal developments also appear to target children in East Jerusalem in contravention of international standards.[138] In August 2016, the Knesset approved amendments to the Israeli youth law that make it possible for prison sentences to be issued for children aged between 12 and 14 years for specific, serious crimes.[139]

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[126] A/HRC/34/36.
[127] International Covenant on Civil and Political Rights, art. 9, and Human Rights Committee general comment No. 35 (2014) on liberty and security of person, para. 15.
[128] Ibid.
[129] International Covenant on Civil and Political Rights, art. 9.
[130] See A/HRC/28/80, para. 33.
[131] Fourth Geneva Convention, art. 78.
[132] Fourth Geneva Convention, arts. 49 and 147. See A/HRC/31/40, para. 43.
[133] See A/HRC/34/36, para. 24.
[134] See A/71/364, para. 36.
[135] See A/HRC/31/40, para. 41, and A/71/364, para. 34.
[136] Convention on the Rights of the Child, art. 37 (b).
[137] Ibid., art. 3 (1).
[138] See A/HRC/31/40, paras. 49-51.
[139] See A/HRC/34/36, para. 29.

Death penalty

61. Under Palestinian law, the death penalty is permitted for a large number of offences and is mandatory for a smaller number of offences. The President is required to confirm the death sentence. Although there is no formal moratorium on executions, in the West Bank none have been carried out since an announcement by the Palestinian President in 2005 that he would not confirm any death sentences.[140] Both in the West Bank and in Gaza, however, courts continue to issue death sentences. In Gaza, executions resumed in 2010, and 22 of the 101 death sentences pronounced since 2008 have reportedly been carried out, despite not having been approved by the Palestinian President.

Freedom of movement and economic, social and cultural rights

62. Palestinians' freedom of movement within the Occupied Palestinian Territory is significantly restricted by a complex and multilayered system of administrative, bureaucratic and physical constraints, including permit requirements, checkpoints and physical obstacles affecting almost every aspect of daily life.[141]

63. Movement restrictions are particularly prevalent in the vicinity of settlements. East Jerusalem is isolated from the rest of the West Bank through the use of permit requirements, as are areas of the "seam zone", i.e. areas west of the wall in the West Bank. The wall[142] remains a key obstacle to freedom of movement. In Gaza, the continuing closures and the related permit regime impose strict limits on Gaza residents wishing to exit Gaza and, to a lesser extent, on West Bank residents wishing to enter Gaza.[143]

64. Freedom of movement is guaranteed under international human rights law.[144] As previously highlighted, restrictions on freedom of movement may also amount to collective punishment, in violation of international humanitarian law.[145] While that right may nevertheless be restricted to address legitimate security needs, any limitation has to be necessary and proportional to the end sought and must be applied consistently with protections afforded by human rights.[146]

65. Freedom of movement is a precondition for the exercise of several other human rights, including economic, social and cultural rights. Access restrictions have a negative impact on the rights to education, health, work and family life throughout the Occupied Palestinian Territory.[147]

66. Limitations on movement and other restrictions also prevent the development of the Palestinian economy. The agricultural sector has been particularly affected, as farmers have been denied access to agricultural areas, water resources and domestic and external markets.[148] Impediments to Palestinians' economic, social and cultural development also affect the exercise of the right to self-determination.[149]

67. The closures in Gaza, together with successive military campaigns by the Israel Defense Forces and the use of force in access-restricted areas, has exacerbated the humanitarian crisis in Gaza, severely undermining any effort at development and resulting

[140] Ibid., para. 57.
[141] See A/HRC/31/44, paras. 12-43.
[142] In 2002, Israel started to build a wall between Israel and the West Bank in order to prevent attacks from Palestinians within Israel. Some 85 per cent of the wall nevertheless runs into the West Bank. Once fully completed, the wall would isolate 9.4 per cent of the West Bank, including East Jerusalem.
[143] See A/HRC/31/44, paras. 12-20.
[144] International Covenant on Civil and Political Rights, art. 12 (1).
[145] Convention respecting the Laws and Customs of War on Land, art. 50, and Fourth Geneva Convention, art. 33.
[146] International Covenant on Civil and Political Rights, art. 12 (3), and Committee on Civil and Political Rights general comment No. 27 (1999) on freedom of movement, para. 14.
[147] International Covenant on Economic, Social and Cultural Rights, arts. 6 and 11-13. See A/HRC/31/44, paras. 44-73.
[148] See A/HRC/22/63, para. 89.
[149] International Covenant on Civil and Political Rights, art. 1, and International Covenant on Economic, Social and Cultural Rights, art. 1. See A/HRC/31/44, para. 11.

in recurrent violations of human rights. The closures have had a negative impact on basic human rights and economic prospects, as well as on the availability of essential services, exacerbating poverty and aid dependency.[150] Access to health, education and broader economic and social rights have been restricted. The situation has caused growing frustration and despair, with an ongoing breakdown in societal ties accompanied by an increase in diseases, crime rates, family disputes, domestic violence and cases of self-harm. The living conditions of people displaced by the conflict have also resulted in an increased risk of violence against women and children.[151]

68. According to the Office for the Coordination of Humanitarian Affairs, 1.3 million people in Gaza were in need of humanitarian assistance as of November 2016.[152] However, efforts by humanitarian actors to address the most pressing needs following the 2014 escalation of hostilities, such as housing, health, education, and water and sanitation services, have been hampered by restrictions on the import of goods considered by Israel as "dual-use" items. Those are civilian goods, such as construction materials or medical equipment, that Israel considers to also be of military use.[153] These restrictions constitute a violation of the obligation of Israel as an occupying power to allow and facilitate the rapid and unimpeded passage of humanitarian relief for civilians in need.[154]

Freedom of expression and peaceful assembly

69. Significant concerns remain regarding violations and abuses by all duty bearers of the rights to freedom of expression, peaceful assembly and association. Israeli and Palestinian authorities impose restrictions and subject both Israeli and Palestinian human rights defenders focusing on the Occupied Palestinian Territory to pressure and harassment.[155] Palestinian activists are regularly arrested, assaulted and harassed by Israeli security forces, in addition to facing physical attacks and harassment from settlers, particularly in Hebron.[156] Israeli human rights organizations advocating for Palestinians' human rights have come under attack from Israeli politicians, whose statements may amount to incitement to violence.[157] Of additional concern is the recent growing intimidation of non-governmental organizations that have been calling for the use of foreign jurisdictions and international justice mechanisms to ensure accountability for Israeli violations.[158]

70. In the Occupied Palestinian Territory, political tensions often lead to human rights abuses, with restrictions on freedom of expression and peaceful assembly, in addition to the targeting of political opponents through harassment, threats, arbitrary arrests, assaults, ill-treatment and torture. OHCHR regularly receives reports of human rights violations perpetrated by the Palestinian security forces and the authorities in Gaza, particularly against individuals and groups critical of the authorities.[159]

71. Throughout the Occupied Palestinian Territory, social media is monitored, and journalists and activists are harassed, arrested, detained and, in some cases, subjected to ill-treatment or torture.[160] Authorities in both the West Bank and Gaza have also imposed restrictions on peaceful assemblies. Such practices contribute to the creation of a repressive environment and promote self-censorship among the Palestinian population.

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[150] See A/71/364, para. 5.

[151] United Nations Entity for Gender Equality and the Empowerment of Women (UN-Women) and Office for the Coordination of Humanitarian Affairs, "Needs of women and girls in humanitarian action in Gaza: gender alert for the 2016 response plan", August 2015, p. 2.

[152] Office for the Coordination of Humanitarian Affairs, "The Gaza Strip: the humanitarian impact of the blockade", 14 November 2016.

[153] See http://gisha.org/publication/4860.

[154] Fourth Geneva Convention, art. 59, and ICRC, *Customary International Humanitarian Law*, rule 55.

[155] See A/HRC/34/36, paras. 39-42.

[156] See A/HRC/31/40, para. 52, and A/HRC/34/36, para. 39.

[157] See A/HRC/34/36, para. 42.

[158] See www.alhaq.org/advocacy/topics/human-rights-defenders/1026-al-haq-under-attack-staff-members-life-threatened and www.mezan.org/en/post/21475.

[159] See A/HRC/31/40, paras. 66-67, and A/HRC/34/36, paras. 51-53.

[160] See A/HRC/31/40, paras. 56-57, and A/HRC/34/36, para. 49.

72. International human rights law guarantees freedom of expression, association and peaceful assembly.[161] Although restrictions on the exercise of those rights are permitted, they must be provided by law and have to be necessary for the protection of the rights and freedoms of others and for the protection of national security and order.

IV. Conclusion

73. Chronic violations of international human rights law and international humanitarian law by all parties persisted during the reporting period. Violations by Israel of the fundamental provisions of the law of occupation continued, particularly with the closures in Gaza and the consolidation and expansion of settlements, suggesting clear patterns and policies. The transfer of parts of the Israeli and the Palestinian populations, and the lack of respect for public and private property, have profoundly altered the status quo in the Occupied Palestinian Territory.

74. The absence of law enforcement and accountability against Israeli perpetrators further contravenes the obligation of Israel as an occupying power to ensure public order and safety and to protect the Palestinian population in all circumstances. Moreover, the application of Israeli national law to Israelis in the West Bank raises concerns under international law.

75. In 2013, experts denounced the "creeping annexation" of the West Bank, preventing the establishment of a contiguous and viable Palestinian State and undermining the right of the Palestinian people to self-determination.[162] The devastating impact of the Israeli occupation on the rights of the Palestinian population can only be reasserted.

76. International law violations by the Palestinian Authority, the authorities in Gaza and Palestinian armed groups are also of concern. The obligation of the Palestinian authorities to uphold human rights in the entirety of the Occupied Palestinian Territory has to be emphasized as an essential element of the governing role of the State of Palestine.

V. Recommendations

77. All violations and abuses of the human rights of the Palestinian people must immediately cease and be promptly, impartially and independently investigated and those responsible must be held accountable. All parties must respect international law and comply with their obligations and responsibilities under international human rights law.

78. All parties, including Palestinian armed groups, shall respect the applicable rules of international humanitarian law, including the principles of distinction, proportionality and precaution, and ensure accountability for all violations.

79. All previous recommendations of the United Nations human rights treaty bodies and other mechanisms of the Secretary-General and of the United Nations High Commissioner for Human Rights that remain valid, as well as the recommendations of commissions of inquiry and fact-finding missions, must be fully and promptly implemented.

80. All States parties to the Geneva Conventions should take measures to ensure the respect of the Conventions by all sides.

81. Israel must end and reverse all settlement activity in the West Bank, including East Jerusalem, and lift the situation of blockade in Gaza.

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[161] International Covenant on Civil and Political Rights, arts. 19 and 21-22.

[162] See A/HRC/22/63, para. 101.

82. In ensuring its legitimate security needs, Israel must respect international humanitarian law and international human rights law.

83. The Palestinian authorities should take steps to encourage national political parties to resolve the political disunity that obstructs the equal implementation of the human rights obligations of the Government of the State of Palestine throughout the Occupied Palestinian Territory.

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Human rights situation in Palestine and other occupied Arab territories

Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan*

Summary

The present report has been prepared pursuant to Human Rights Council resolution 31/36 on Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan. The report contains information on trends in settlement expansion, land designation for Israeli use in the West Bank and policies and practices pertaining to the Israeli settlement enterprise. It examines the human rights and international humanitarian law violations arising from the continued settlement expansion and land designation policy of Israel, including the implications of the coercive environment affecting Palestinian communities at risk of forcible transfer. The report also provides an analysis of violations relating to the production of and trade in settlement goods.

* The present report was submitted after the deadline in order to reflect the most recent developments.

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I. Introduction

1. The present report is being submitted pursuant to Human Rights Council resolution 31/36 and covers the period between 1 November 2015 and 31 October 2016. It should be read in conjunction with previous reports of the Secretary-General on Israeli settlements submitted to the General Assembly and the Council.[1]

2. The report illustrates the persistence of the Israeli settlement enterprise, which includes settlement expansion and efforts to exert control over land in the West Bank, including East Jerusalem, as Israeli occupation of Palestinian territory enters its fiftieth year and as that of the occupied Syrian Golan enters its forty-fourth year.

3. The report highlights how the policies relating to settlement activities remain at the core of a range of human rights violations in the West Bank, including East Jerusalem. It examines how such policies create a coercive environment in areas under Israeli control, placing affected Palestinian communities at risk of forcible transfer. Pursuant to Human Rights Council resolution 31/36, the report includes an analysis of the human rights and international law violations involved in the production of settlement goods and the relationship between trade in those goods and the maintenance and economic growth of settlements.

II. Legal background[2]

4. Israel bears responsibility for implementing in the Occupied Palestinian Territory the human rights obligations enshrined in the seven core human rights treaties and conventions it has ratified. International humanitarian law imposes obligations on Israel as the occupying power. It is obliged to respect the fundamental rights of the protected population in all circumstances.[3]

Transfer of the population of the occupying power to the territory it occupies

5. In its resolution 70/89, the General Assembly reaffirmed the illegality of Israeli settlements in the Occupied Palestinian Territory, including East Jerusalem, and in the occupied Syrian Golan.

6. The same determination has been made by both the Security Council, in its relevant resolutions,[4] and the International Court of Justice, as regards settlement activities in the Occupied Palestinian Territory.[5] Settlements amount to the transfer of the population of Israel into the territory it occupies, which is prohibited under international humanitarian law. The transfer of an occupying power's population to a territory it occupies amounts to a war crime that may engage the individual criminal responsibility of those involved.[6]

Prohibition against the forcible transfer of protected persons

7. International humanitarian law prohibits "individual or mass forcible transfers" of protected persons within the occupied territory, as well as deportations outside of the

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[1] See A/HRC/28/44, A/HRC/31/43 and A/71/355, which covers the first months of the period under review, and A/69/348 and A/70/351.

[2] See A/HRC/28/44, paras. 5-6, A/HRC/31/43, para. 4, A/69/348, paras. 4-5, and A/HRC/25/38, paras. 4-5.

[3] Geneva Convention relative to the Protection of Civilian Persons in Time of War (Fourth Geneva Convention), art. 27.

[4] Security Council resolutions 465 (1980) and 2334 (2016).

[5] *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory, Advisory Opinion, I.C.J. Reports 2004*, p. 134.

[6] Rome Statute of the International Criminal Court, art. 8 (2) (b) (viii).

occupied territory, regardless of their motive.[7] Such unlawful transfers constitute a grave breach of the Fourth Geneva Convention (art. 147) and potentially incur the individual criminal responsibility of officials engaged in such acts.[8] While other international humanitarian law provisions may be violated within the context of forcible transfer (e.g. the prohibition of the destruction of private and public property[9]), such transfers may imply the violation of several human rights, such as the right to adequate housing, including the prohibition of forced evictions,[10] the right to non-interference with family and home,[11] the right to freedom of movement[12] and the right to education.[13]

Private property and natural resources

8. International humanitarian law provides certain protections for private and public property in occupied territories.[14] Accordingly, Israel, as the occupying power, is prohibited from destroying public and private property except where it is rendered absolutely necessary by military operations. In addition, it is limited in how it may use public property; and the property of municipalities must be treated in the same way as private property.[15] Moreover, the water and other natural resources of the occupied territory must be administered in accordance with the applicable rules of international humanitarian law and may not be damaged or depleted.[16]

Extraterritorial application of domestic laws

9. Israel applies a substantial part of its domestic laws to Israeli settlers living in the occupied territories, while Palestinians living in the West Bank are subject to Israeli military rule.[17] The extraterritorial application of Israeli domestic law to settlers creates two different legal systems in the same territory, on the sole basis of nationality or origin. Such differentiated application is discriminatory and violates the principle of equality before the law, which is central to the right to a fair trial.[18] In addition, the occupying power is required to respect the laws in force in the occupied territory, unless it is absolutely prevented from doing so.[19]

III. Settlement enterprise: expansion, land takeover and denial of Palestinian development

10. With the Israeli occupation of the Palestinian territory now in its fiftieth year, illegal settlement activity continues to advance apace. Through continued expansion of illegal settlements and parallel efforts to consolidate Israeli control over the West Bank, successive Israeli governments since 1967 have overseen the steady growth of the settler population

[7] Fourth Geneva Convention, art. 49. International Committee of the Red Cross, "Customary law", *International Review of the Red Cross*, vol. 87, No. 857 (March 2005), rule 129.

[8] Rome Statute of the International Criminal Court, arts. 7 (1) (d), 8 (2) (a) (vii) and 8 (2) (b) (viii).

[9] Fourth Geneva Convention, art. 53, and Convention respecting the Laws and Customs of War on Land, art. 46.

[10] International Covenant on Economic, Social and Cultural Rights, art. 11. See also Committee on Economic, Social and Cultural Rights general comment No. 7 (1997) on forced evictions.

[11] International Covenant on Civil and Political Rights, art. 17.

[12] Ibid., art. 12.

[13] International Covenant on Economic, Social and Cultural Rights, art. 13.

[14] Convention respecting the Laws and Customs of War on Land, arts. 46-47 and 52-56, and Fourth Geneva Convention, arts. 33, 46 and 53.

[15] Fourth Geneva Convention, arts. 43, 53, 55 and 64.

[16] Convention respecting the Laws and Customs of War on Land, art. 55.

[17] This is not relevant to East Jerusalem, which, since its illegal annexation by Israel, has been subject to the Israeli legal system. It is recalled that the Security Council, in its resolution 252 (1968), reaffirmed that acquisition of territory by military conquest was inadmissible, a position reiterated in subsequent resolutions.

[18] International Covenant on Civil and Political Rights, arts. 2 and 14.

[19] Convention respecting the Laws and Customs of War on Land, art. 43.

and the unilateral takeover of large swaths of West Bank land reserves, in violation of international law.

11. The settler population in Area C and East Jerusalem has doubled since the Oslo Accords, reaching over 594,000 people (including an estimated 208,000 in East Jerusalem) by the end of 2015[20] living in some 130 settlements and 100 outposts. That number is expected to rise further given the advancement of new construction in settlements. The existence of Israeli settlements and the designation of land for exclusive Israeli use have resulted in the gradual fragmentation of the West Bank, demographic changes and the illegal exploitation of natural resources, while restricting Palestinians' access and denying possibilities for Palestinian development.

12. In July 2016, the Middle East Quartet questioned the long-term intentions of Israel given its continued efforts to exert control over the West Bank.[21] The Quartet cited the Israeli policy of settlement construction and expansion, designating land for exclusive Israeli use and denying Palestinian development as key elements in the steady erosion of the viability of the two-State solution, which undermines hopes for peace.

13. The policies and practices of Israel detailed in the sections below raise serious concerns. The impact of the Government's settlement policy on the human rights situation of Palestinians in the West Bank, including East Jerusalem, has been devastating, as highlighted by the significant developments that occurred during the period under review.

A. Designation of land for exclusive Israeli use

14. Since Israel began its occupation of the Palestinian territory in 1967, a central feature of its settlement policy in the West Bank has been the gradual takeover and designation of land for exclusive Israeli use. This has been done through various measures, including the designation of certain areas as "State land", closed military zones, national parks and archaeological sites, State support for the informal takeover of land and the encouragement of economic activities in the settlements. As a consequence of such policies, approximately 70 per cent of Area C land is off-limits for Palestinian construction and development and the situation in East Jerusalem has been profoundly altered.[22]

Designation of "State land" and allocation of land for settlements

15. Over one third of Area C has been formally designated as public land (referred to as "State land" by Israel), following a process of land registration initiated under Jordanian rule and, since 1967, by the Israeli authorities. The vast majority of "State land" designations took place before the start of the Oslo peace process in the early 1990s. "State land" has been allocated exclusively for use by Israel and its citizens, rather than for the benefit of the local population, as required under international law.[23]

16. Land allocations to 24 Israeli regional and local settlement councils, comprising 126 settlements on approximately 63 per cent of Area C, typically encompass (in addition to built-up settlement areas) farmland, industrial zones, parks, access roads and security perimeters or buffer zones.[24] Such allocations result in a footprint that vastly exceeds built-up settlement areas, which amount to only around 2 per cent of Area C.[25]

17. During the reporting period, the Israeli authorities declared over 200 hectares south of Jericho as "State land". The Blue Line team in the Israeli Civil Administration tasked

[20] Israel, Central Bureau of Statistics.

[21] Report of the Middle East Quartet of July 2016, pp. 5-6. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[22] Area C comprises approximately 60 per cent of the West Bank and includes most of the land reserves for a future Palestinian State.

[23] B'Tselem, *By Hook and By Crook: Israeli Settlement Policy in the West Bank* (July 2010), pp. 21-35. Available from www.btselem.org/download/201007_by_hook_and_by_crook_eng.pdf.

[24] Yesh Din, "Land takeover practices employed by Israel in the West Bank" (September 2016), p. 2.

[25] Ibid.

with inspecting and amending or validating the boundaries of land previously designated as "State land" continued its activities. In a number of cases, this process has enabled the retroactive authorization of prior settlement construction carried out without the permits required under Israeli law.[26]

Impunity and support for the informal takeover of land

18. Incidents of violence against Palestinians, trespassing and the forceful takeover of land have often been conducted as part of a calculated effort by settlers to expand Israeli control beyond settlement jurisdiction areas.[27] Such actions have become effective ways of taking over land,[28] notably owing to the passivity of the Israeli authorities in addressing them.[29] Indeed, Israeli settlers in the West Bank have historically enjoyed impunity for trespassing and committing violent attacks against Palestinians, and orders against agricultural invasions, whereby settlers take over and cultivate private Palestinian land, remain almost entirely unenforced.[30]

19. The period under review witnessed the continuation of a significant decline in incidents of settler violence resulting in Palestinian casualties or damage to property, from 397 incidents in 2013 to 81 incidents between January and 31 October 2016.[31] During the reporting period, the severity of settler violence also declined compared with 2015.

20. This positive trend has been linked to preventive measures implemented by the Israeli security forces, including enhanced presence in friction areas and known hotspots for settler violence and increased issuance and enforcement of administrative measures against known violent settlers — primarily restraining orders barring them from the West Bank and, in some instances, administrative detention orders. Resort to such measures reportedly intensified following the murder of three members of the Dawabsheh family in Duma, in July 2015, for which two Israeli citizens were indicted.[32]

Designation of land for use as national parks, archaeology sites and tourism destinations as a means to entrench Israeli presence in the West Bank

21. The designation of national parks and archaeological sites and their promotion for Israeli and international tourism continues to contribute to consolidating Israeli civilian presence and control over land in the Occupied Palestinian Territory. Approximately 14 per cent of Area C land has been designated for use as national parks, and the tourism heritage site development rooted in the illegal annexation of East Jerusalem has profoundly altered the shape and character of the areas surrounding the Old City, creating footholds for residential settlement expansion in Palestinian neighbourhoods.[33] The management of such

[26] See A/HRC/31/43, paras. 21-23, and A/71/355, para. 13.

[27] See A/70/351, paras. 52-60.

[28] Talya Sason, in "Summary of the opinion concerning unauthorized outposts" (10 March 2005), writes:

> The expansion of the unauthorized outposts phenomenon began in the mid-nineties, after the building in Judea, Samaria and Gaza was frozen by the Rabin Administration in 1993. Building in settlements was still approved, but the approval rate went decreasing as the negotiations with the Palestinian representatives accelerated. The unauthorized outposts phenomenon began expanding, in light of the government's position opposing the authorizing of the building of settlements in the territories.

[29] As documented by Talya Sason in "Summary of the opinion concerning unauthorized outposts", privately led settlement expansion efforts have also received direct support from the Israeli authorities, despite an official position opposing settlement construction. See also Yesh Din, *The Road to Dispossession: a Case Study — the Outpost of Adei Ad* (February 2013).

[30] Yesh Din, "Land takeover practices employed by Israel in the West Bank". See also the following reports commissioned by the Government of Israel addressing historic law enforcement failures in the West Bank: Talya Sason, "Summary of the opinion concerning unauthorized outposts"; Meir Shamgar, "Commission of inquiry into the massacre at the tomb of the patriarchs in Hebron (26 June 1994); and Yehudit Karp, "The Karp report: investigation of suspicions against Israelis in Judea and Samaria, Jerusalem" (1982).

[31] Figures provided by the Office for the Coordination of Humanitarian Affairs of the Secretariat.

[32] See A/71/355, para. 19.

[33] See A/70/351, paras. 29-36 and 63-66.

sites restricts Palestinians' freedom of movement and prevents equal enjoyment of cultural life and heritage.[34]

22. The management of archaeological and tourism sites by private settler groups came under scrutiny following the intervention by senior officials of the Ministry of Justice on behalf of the settler group Elad. Elad successfully reinstated the original plans for Kedem Compound, a large tourist facility proposed in Silwan, East Jerusalem, after Jerusalem planning bodies had significantly reduced the scope of the plans.[35] A report of the Israeli State Comptroller highlighted the lack of poor oversight by government authorities in relation to Elad's management of tourism and ancient sites and the lack of transparency in relation to links between the organization's management and government entities.

Designation of occupied land for economic activities

23. In the report on Israeli settlements submitted to the General Assembly at its seventy-first session (see A/71/355, para. 4), it was noted that the encouragement of economic activities, including industrial and agricultural activities, within and around settlements represented an additional way for Israel to support settlement expansion besides the allocation of land for settlement homes and infrastructure.[36]

24. Through financial incentives, the Government of Israel has continued to actively encourage commercial development by Israeli and international businesses in and around the settlements. Almost all settlement industrial zones are designated as national priority areas, which carries benefits such as reductions in the price of land, grants for the development of infrastructure and tax breaks for individuals and business enterprises.[37] In its recent report on settlement businesses, Human Rights Watch noted that the physical footprint of Israeli business activity in the West Bank was larger than that of residential settlements. According to Human Rights Watch, industrial zones (1,365 hectares) and agricultural land (9,300 hectares) exploited by Israel in the West Bank occupy a surface area 1.7 times greater than the built-up area of residential settlements (6,000 hectares).[38]

B. Settlement construction and expansion

25. The Israeli policy of construction and expansion of settlements and related infrastructure, and support to privately led settlement expansion initiatives throughout the West Bank continued, and an overall acceleration in settlement expansion was observed during the reporting period. Following a period of significant slowdown in planning and tendering since mid-2014, an overall acceleration in settlement expansion was reported during 2016, as measured against the main indicators of government-led settlement activity: the number of new constructions rose compared with previous years, with the highest number of new constructions in three years recorded during the second quarter of 2016. Moreover, there was an uptick in plans advanced in both East Jerusalem and Area C.[39] Similarly, settler-led initiatives continued to enjoy State support, as evidenced by the

[34] See A/70/351.

[35] See www.haaretz.com/israel-news/.premium-1.745359.

[36] In its resolution 31/36, the Human Rights Council requested the Secretary-General to report on the human rights and international law violations involved in the production of settlement goods and the relationship between trade in these goods and the maintenance and economic growth of settlements.

[37] See https://www.hrw.org/report/2016/01/19/occupation-inc/how-settlement-businesses-contribute-israels-violations-palestinian.

[38] Ibid.

[39] According to the Israel Central Bureau of Statistics, construction started on 1,723 housing units during the first three quarters of 2016, an increase of 25 per cent compared with the same period in 2015. In Area C, 24 settlement plans involving the construction of 2,264 housing units were put forward without reaching the final approval stage. Fourteen additional plans reached a final approval stage (710 units). The figures represent an increase over 2015 but a decrease compared with 2014. Similarly, in East Jerusalem, plans for 1,572 units were put forward during 2016 compared with 1,285 units in 2015, which represented a significant decrease compared with the 3,300 units proposed in 2014.

growth in privately led East Jerusalem settlement enclaves (see para. 31 below) and continued efforts to retroactively legalize unauthorized Area C outposts.

Housing and infrastructure

26. There were significant developments in planning and construction during the period under review, particularly in East Jerusalem, including the issuance by the Israeli authorities, in November 2015, of a tender for 438 housing units in the settlement of Ramat Shlomo, in the northern periphery of the city.[40]

27. In July 2016, the Israeli media reported on a rare, court-mandated approval of a plan for 600 housing units in the Palestinian village of Beit Safafa.[41] It also reported on advances made in the construction of 560 settlement units in Maale Adumim and of 240 such units in East Jerusalem, which were soon followed by the issuance of tenders for an additional 323 units in those settlements.[42]

28. Other key developments in East Jerusalem included advances in the planning and construction of residential buildings and infrastructure in the southern perimeter of the city by municipal planning authorities. Non-governmental organizations monitoring settlement expansion have highlighted those developments as part of broader efforts by the Israeli authorities to further the establishment of a contiguous Israeli-controlled corridor connecting the Gush Etzion settlement bloc, located in Bethlehem Governorate, to Jerusalem. In that regard, construction began on a new road facilitating access between Gush Etzion and Jerusalem;[43] proposals for housing plans and tenders continued to advance in Gilo settlement,[44] which was expected to enable the expansion of the settlement southward, towards Beit Jala; the construction of the wall resumed south of Beit Jala and west of Al Walajeh; and the construction of a visitors' centre started in an adjacent area located in Beit Jala's agricultural hinterland, which had been designated as a national park in 2013. Furthermore, the construction of a road leading to an undeveloped parcel in nearby Givat HaMatos C raised concerns as an indication of possible future construction plans in the area.[45]

29. An acceleration in the implementation of settlement-related policies and measures in the southern periphery of Jerusalem and in Bethlehem Governorate resulted in the fragmentation of the area, the shrinking of space available for Palestinian development and the separation of rural hinterlands from urban areas. Key concerns emanating from these developments include the impact on the rights of Palestinian residents of the area to freedom of movement, an adequate livelihood and the enjoyment of natural resources.[46]

Support to privately led settlement initiatives in East Jerusalem

30. Israeli civil society organizations reported on the growth of privately led settlement efforts in East Jerusalem, particularly in the city's "historic basin", which saw a 25 per cent increase in the total number of settlers between 2009 and October 2016, to approximately 2,500 settlers.[47] The initiatives are supported by government funding, including through a

[40] See www.peacenow.org.il.

[41] See www.haaretz.com/israel-news/1.728768.

[42] See https://www.un.org/sg/en/content/sg/statement/2016-07-04/un-secretary-general-israeli-decisions-regarding-new-construction.

[43] Ir Amim newsletter available from www.altro.co.il/newsletters/show/8617?key=08df354b3dd7853bae6cc333e526b2dd&value=9a3cdcd0e38da468aea5b504ce87c7a2d1ce4fef: 1260978.

[44] As part of the announcement for the tender of 323 units (see para. 27 above).

[45] While not yet approved at the time of writing, the parcel in question has been designated for 800 housing units. See Ir Amim newsletter available from www.altro.co.il/newsletters/show/9056?key=ebb7138f916d1c7391aece8ed6e1c804&value=c2e4bb0d506603c6a015881780b407ec41d90f70: 1284691.

[46] Office for the Coordination of Humanitarian Affairs, "Bethlehem Governorate: fragmentation and humanitarian concerns", factsheet (January 2015).

[47] Ir Amim and Peace Now, *Broken Trust: State Involvement in Private Settlement in Batan Al-Hawa, Silwan* (May 2016), p. 5.

security budget allocated by the Ministry of Construction and Housing, totalling approximately US$ 25 million in 2015.[48]

31. Intensified efforts by Israeli settler groups to take control of East Jerusalem properties, often located deep within Palestinian neighbourhoods, have generated an increased risk of evictions of Palestinian families (see also para. 56 below).

Retroactive legalization of outposts in Area C

32. Successive reports to the General Assembly have detailed Israeli support to settlement outposts (erected by settlers without official approval from the Government of Israel) through the provision of funds, infrastructure and security, and through the lack of any action to remove them.

33. While no outpost has been legalized since May 2014, efforts to retroactively approve such settlements took a new form during the period under review, as a draft bill was introduced to avert the impending court-mandated 25 December 2016 deadline for the evacuation and demolition of the outpost of Amona, erected on the private lands of residents of Silwad, Ein Yabroud and Taibeh. The "regularization bill" envisaged the retroactive "regularization" of settlement houses built on private Palestinian property, which would remove key legal obstacles to the retroactive legalization of dozens of unauthorized outposts.[49]

C. Production of and trade in settlement goods

34. The production of and trade in settlement goods raises concerns about the human rights impact on Palestinians caused and exacerbated by business enterprises and States. The human rights obligations of Israel within the Occupied Palestinian Territory stem from the jurisdiction and effective control it exercises as the occupying power. That includes the obligation to protect individuals and communities from adverse human rights impacts by third parties, such as business enterprises, operating in territory under its effective control. Under article 1 common to the Geneva Conventions, States parties have to respect and ensure respect for the Conventions. Accordingly, third States are under the obligation not to recognize the unlawful situation resulting from Israeli settlements, nor to aid or assist in the violations committed by Israel.[50]

35. The European Union is the main trading partner of Israel, with trade worth over 32 billion euros in 2015. The Government of Israel has reportedly estimated that the annual value of industrial goods produced in settlements and exported to Europe is US$ 300 million. Agricultural production provides the main source of income for settlements in the Jordan Valley, with 66 per cent of their produce being exported.

36. Products that are wholly or partially produced in settlements are frequently labelled as coming from Israel, obscuring their actual origin. That allows the exports to be covered under preferential trade agreements with the European Union that exclude settlements. Some measures have been taken to address that issue. During the reporting period, the European Union issued new labelling guidelines for products coming from the West Bank, including East Jerusalem, and the Golan Heights. Under those guidelines, any product originating from a settlement must not be labelled as "Made in Israel" but must clearly be labelled as having been produced in a settlement.

37. While States have a primary duty to protect human rights, there is an independent corporate responsibility to respect human rights applicable to all business enterprises, irrespective of where they operate. That has been recognized in the Guiding Principles on

[48] Ibid, p. 12.

[49] See A/HRC/31/43 and A/71/355. See also www.ohchr.org/EN/NewsEvents/Pages/DisplayNews.aspx?NewsID=21003&LangID=E.

[50] See *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory*, paras. 157-159, and International Committee of the Red Cross, 2016 commentary on article 1 common to the Geneva Conventions, para. 163.

Business and Human Rights, which are based on existing responsibilities under international law and have been unanimously endorsed by all the States members of the Human Rights Council (see, in particular, A/HRC/17/31, annex, principle 11).

38. The role of Israeli and foreign businesses in supporting and maintaining the existence of the settlements has already been highlighted (see A/67/379 and A/68/376). In its 2013 report, the independent international fact-finding mission to investigate the implications of the Israeli settlements on the civil, political, economic, social and cultural rights of the Palestinian people throughout the Occupied Palestinian Territory, including East Jerusalem, concluded that business enterprises had directly and indirectly enabled, facilitated and profited from the construction and growth of the settlements and that businesses contributed to the maintenance, development and consolidation of the settlements with full knowledge of the liability risks (see A/HRC/22/63, paras. 96-97).

39. Since the fact-finding mission's report, increasing attention has been paid to the activities of business enterprises in relation to settlements. In 2014, the Working Group on the issue of human rights and transnational corporations and other business enterprises emphasized that businesses connected to Israeli settlements needed to be able to demonstrate that they neither supported the continuation of an international illegality nor were they complicit in human rights abuses; that they could effectively prevent or mitigate human rights risks; and that they were able to account for their efforts in that regard. The Working Group added that where companies could not prevent or mitigate the risks of being involved in human rights violations through their operations and business relationships, they might need to consider terminating their operations.[51]

IV. Coercive environment resulting from settlement policies and consequent risk of forcible transfer

40. The impact of settlement policies on the living conditions of Palestinians, including their increased risks of individual and mass forcible transfer, continues to be a concern.

41. Moreover, Israel, as the occupying power, may be increasing pressure on Palestinians to move out of their areas of residence through practices and policies that contribute to the creation of a coercive environment in areas under full Israeli control. In previous reports, the Secretary-General has outlined the existence of a coercive environment in parts of Area C and Hebron's H2 and highlighted factors constituting a coercive environment with respect to East Jerusalem.[52] He has also raised concerns about cases where forcible transfer appears to have taken place.[53]

42. The impact of a coercive environment on individuals and communities depends on their specific circumstances and experience. A coercive factor alone or in combination with others may be sufficient to determine the existence of a coercive environment in a given case and its connection with the grave breach of forcible transfer. The list of coercive factors below is not exhaustive.

A. Factors contributing to a coercive environment in the West Bank

43. The factors below contribute to the creation of a coercive environment in areas of the West Bank under full Israeli control.

[51] See www.ohchr.org/Documents/Issues/Business/OPTStatement6June2014.pdf.

[52] See A/HRC/24/30, para. 27, A/HRC/31, paras. 46 and 68, A/70/421, para. 36, A/69/348, paras. 12-16, A/HRC/28/80, para. 24, A/HRC/31/43, para. 54, A/69/348, paras. 12-16, A/HRC/25/40, para. 22, and A/71/355, paras. 24-33.

[53] See A/67/372, para. 39, A/HRC/25/40, paras. 18-20, A/69/347, para. 26, and A/71/355, paras. 61-64.

"Relocation" plans and evictions

44. The publicly stated intention of the Government of Israel to relocate or evict thousands of Palestinians currently residing in Area C is a principal source of pressure and coercion for the communities and individuals concerned. In previous reports it was highlighted that the implementation of such plans would entail forcible transfers, except where the individuals affected expressed genuine consent to move.[54] This relates in particular to Israeli plans to relocate some 7,500 Palestinian Bedouin and herders to between three and nine centralized sites[55] and to evict some 1,000 Palestmians living in eight villages in the Massafar Yatta area for the enforcement of a firing zone.[56] It also applies to other eviction and relocation plans affecting 55 Palestinian families in Susya[57] and other communities targeted for relocation outside their areas or residence, such as Dkaika,[58] in southern Hebron Governorate.

45. A history of forced evictions and transfers of entire communities by Israeli authorities places additional pressure on the individuals and communities targeted by these plans.[59]

46. The Secretary-General, the United Nations High Commissioner for Human Rights and the Special Rapporteur on the situation of human rights in the Palestinian territories occupied since 1967 have pointed to the seizure of Palestinian homes and forced evictions (and the risk of such seizures and evictions taking place) to make way for settlers to move in, as factors suggesting a coercive environment in East Jerusalem.[60] According to the

[54] See A/HRC/25/40, paras. 18-21 and 78, A/67/372, para. 36-37, and A/HRC/24/30, para. 29.

[55] See A/HRC/31/43, paras. 56-60. On 14 June 2016, the Deputy Head of the Israeli Civil Administration, Col. Uri Mendez, referred to nine relocation sites during the "Judea and Samaria" subcommittee meeting.

[56] See A/HRC/24/30, para. 28.

[57] See A/HRC/31/43, paras. 50-54.

[58] The Bedouin community of Dkaika has a population of approximately 450, most of whom are Palestine refugees. The Israeli Civil Administration has proposed relocating the community to one of the nearby villages, in line with the State's official position expressed on 13 May 2009 and 23 March 2016 in response to a petition submitted to the High Court of Justice by Dkaika residents demanding planning and zoning rights for the community. On 2 November 2016, the High Court ordered that Dkaika residents and the State enter into discussions for 90 days to find a solution regarding planning for the village residents. A temporary protection order against demolitions is in place. While it remains unclear whether planning in that location will be an option for the State, the High Court criticized the State's proposed relocation plan on the grounds that there was no public need or benefit to transfer residents. See http://rhr.org.il/eng/2016/11/update.

[59] Between 1997 and 2007, the Israeli authorities transferred in three waves some 150 Bedouin families in Jerusalem Governorate to the Al Jabal site despite their opposition to the relocation. See United Nations Relief and Works Agency for Palestine Refugees in the Near East, "Al Jabal: a study on the transfer of Bedouin Palestine refugees" (2013). Experts have assessed that these three waves of displacement amounted to forcible transfer under international humanitarian law. See Théo Boutruche and Marco Sassoli, "Expert opinion on the displacements of Bedouin communities from the central West Bank under international humanitarian law" (September 2014). In 1999, the Israel Defense Forces moved some 700 Palestinian herders out of 12 villages in the Massafer Yatta area, in Hebron Governorate, on the grounds that the area had been designated as a military firing zone. Affected Palestinians were reportedly placed in trucks and removed by force out of the area. See www.acri.org.il/en/2013/03/07/918-whats-the-deal-2. See also A/HRC/24/30, para. 28, and Office for the Coordination of Humanitarian Affairs, "Life in a firing zone: the Massafer Yatta communities" (May 2013). In 1986, 25 families were expelled from the residential area of Susya in southern Hebron Governorate on the grounds that the land had been designated an archaeological site. A second transfer took place from the new site in 2001. See Office for the Coordination of Humanitarian Affairs, "Susiya: a community at imminent risk of forced displacement" (June 2015), Rabbis for Human Rights (http://rhr.org.il/eng) and B'Tselem, "Khirbet Susiya: a village under threat of demolition" (7 August 2016).

[60] See A/70/351, paras. 25-51, and A/HRC/16/71, paras. 20-22. See also the letter dated 30 April 2015 from the Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context, the Special Rapporteur on the independence of judges and lawyers and the Special Rapporteur on the situation of human rights in

Israeli non-governmental organizations Ir Amin and Peace Now, at least 55 families were evicted from their homes in 2015 and 2016, and some 300 Palestinian families are under threat of eviction or imminent house demolition in the "historic basin" of the Old City of East Jerusalem.[61] In most cases, the evictions have been initiated by Israeli settler organizations on the basis of landownership claims, as well as claims that the residents are no longer "protected tenants". As a result, 818 Palestinians, including 372 children, are at risk of displacement.[62]

Demolitions

47. Demolitions,[63] the threat of demolitions[64] and the lack of long-term protection against demolitions have been identified as key elements contributing to a coercive environment in the West Bank. Demolitions have been identified as a key coercive factor, in particular for Area C communities targeted for relocation,[65] communities in closed military zones[66] and communities located near Israeli settlements.[67]

48. During the reporting period, the highest number of demolitions of Palestinian homes and structures was recorded in the West Bank, with 874 structures demolished in Area C in 2016, compared with 456 in 2015, and 190 demolitions taking place in East Jerusalem, compared with 79 in 2015, the highest demolitions rate on record.[68] Between 1988 and 2016, the Israeli Civil Administration issued 14,929 orders to demolish around 16,000 Palestinian-owned structures in the West Bank, excluding East Jerusalem, which had been built without permits from the Israeli authorities.

49. The pace of demolitions in East Jerusalem also accelerated to an alarming rate, reaching 190 between 1 January and 31 October 2016, compared with 79 in 2015.[69]

Pressure from government officials

50. Pressure, including threats and harassment during repeated visits from Israeli Civil Administration and other government officials, including members of the Israeli security forces, continued to be documented as an ongoing form of coercion.[70] During visits, in

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the Palestinian territories occupied since 1967 (https://spdb.ohchr.org/hrdb/30th/public_-_UA_Israel_30.04.15_(1.2015)_pro.pdf).

[61] Ir Amim newsletter available from www.altro.co.il/newsletters/show/9436?key=d50319441ca2cddc8d7e87ceb1028269&value=c2e4bb0d506603c6a015881780b407ec41d90f70:1284691.

[62] Office for the Coordination of Humanitarian Affairs, "East Jerusalem: Palestinians at risk of evictions", 3 November 2016.

[63] See A/68/513, paras. 30-34, A/HRC/25/38, paras. 11-20, and A/HRC/31/43, para. 44.

[64] See A/HRC/28/80, para. 24, and A/69/348, para. 13.

[65] See A/HRC/31/43, paras. 46 and 68, A/67/372, para. 55, A/HRC/24/30, A/69/348, para. 13, A/HRC/25/40, paras. 18-20, and A/HRC/28/45, para. 53.

[66] Approximately 18 per cent of Area C has been designated by the Israeli authorities as "firing zones"; 38 Palestinian communities are located in such zones. Because the Israeli Civil Administration prohibits construction in firing zones, wide-scale demolitions frequently take place. During 2016, at least five communities located in areas designated as firing zones experienced demolitions, including Halaweh and Jinba, in the Massafer Yatta area of Hebron, and are at risk of being forcibly transferred to allow implementation of firing zone 918; Ein ar Rashash (Ramallah, firing zone 906); Al Jiftlik-abu al Ajaj (Jericho Governorate) and Khirbet Tana in the northern Jordan Valley (firing zone 904). Office for the Coordination of Humanitarian Affairs, "Wide-scale demolitions in Khirbet Tana", 4 March 2016.

[67] See A/HRC/28/45, para. 45, A/HRC/22/63, paras 32-38, and A/HRC/67/375, paras. 10-11.

[68] The Office for the Coordination of Humanitarian Affairs began collecting data on demolitions in 2009.

[69] Ir Amim newsletter available from www.altro.co.il/newsletters/show/9502?key=86ffe4a161ed2848474b99ff41b71bac&value=c2e4bb0d506603c6a015881780b407ec41d90f70:1284691.

[70] In Khirbet Tell el-Himma (northern Jordan Valley), the Office for the Coordination of Humanitarian Affairs has documented regular harassment by officials of the Israeli security forces and settlers during visits to the community following the demolition of homes and other structures in September

particular following demolitions, officials have reportedly solicited the relocation or removal of the affected individuals outside their area of residence and have threatened to transfer them out forcibly.[71]

51. Even where individuals may express consent to relocate, including formal expressions of consent, the transfer would be forcible, and in violation of international law, unless the affected individuals express genuine consent.[72]

Impact of military operations and settler violence

52. In Hebron's H2, the general sense of insecurity caused by the heavy military presence and security operations, which often involve the use of force by Israeli security forces, as well as harassment and arbitrary arrests, contribute to the creation of a coercive environment.[73] Meanwhile, Area C communities located inside and around areas defined by Israel as "firing zones" continued to experience a coercive environment, notably as a result of military training exercises, including with live fire. The Office for the Coordination of Humanitarian Affairs has documented such training exercises causing displacement during the reporting period.[74]

53. For communities located in close proximity to settlements and known hotspots of settler violence, violence and harassment by settlers exacerbate the coercive nature of the environment. Nonetheless, the frequency of reports of such incidents dropped notably during the reporting period.[75]

Restrictions on freedom of movement and access to essential services

54. As noted by the Middle East Quartet, the policy of denial of Palestinian development has extended to the "complex system of physical and administrative restrictions on the movement of people and goods, which Israel justifies as necessary for security", including closures, checkpoints, limits to access to natural resources and agricultural land, and impediments to accessing basic services, including medical care and education.[76]

55. Those restrictions and their impact have previously been identified as directly contributing to the coercive environment that exists in areas under full Israeli control.[77] Similarly, interference by Israeli authorities in the provision of humanitarian assistance and

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2016. See Office for the Coordination of Humanitarian Affairs, Monthly Humanitarian Bulletin (October 2016). In January 2016, the Office of the United Nations High Commissioner for Human Rights recorded the testimonies of Abu Nwar residents referring to threats received from Israel Civil Administration officials and a liaison officer following the demolition of five residential and other structures on 6 January 2016, leaving 26 refugees, including 17 children, of whom 4 were living with disabilities, displaced and without a home in the middle of winter. In the following days, on 10 and 14 January, humanitarian materials donated by the international community as part of the post-demolition response were confiscated by the Administration.

[71] For further reports on intimidation and threats related to communities in the outskirts of Jerusalem, see A/70/421, para. 46, and A/HRC/31/43, para. 59. See also www.unrwa.org/newsroom/official-statements/unrwa-condemns-demolition-homes-palestine-refugee-bedouins-families.

[72] See A/67/372, para. 37.

[73] See A/71/355, paras. 25-50.

[74] Al-'Aqaba community in the northern Jordan Valley was exposed to sustained live fire inside the residential area for two days while an Israeli military training exercise was being conducted in the vicinity. Residents of the nearby community of Humsa al-Bqai'a were also temporarily displaced as a result. See Office for the Coordination of Humanitarian Affairs, Humanitarian Bulletin — Occupied Palestinian Territory (October 2016).

[75] Systematic intimidation by Israeli settlers has created a coercive environment in Susiya. See A/HRC/31/43, para. 54, and footnote 79 above. Incidents of intimidation and physical violence by settlers and Israeli security forces against Bedouins in Umm al-Khair have been documented (see A/68/513, para. 37).

[76] Report of the Middle East Quartet of July 2016, p. 6. Available from www.un.org/News/dh/infocus/middle_east/Report-of-the-Middle-East-Quartet.pdf.

[77] See A/71/355 and A/HRC/31/43.

the destruction of such assistance in Area C has heightened the risk that affected communities will be forcibly transferred.[78]

Additional factors contributing to a coercive environment

56. Other factors contributing to a coercive environment include the strict residency regime for East Jerusalem residents and restrictions on family unification between residents of East Jerusalem and other parts of the West Bank.[79]

57. Similarly, policies and practices in the context of the five-decade-long Israeli occupation can contribute to a coercive environment, notably the confiscation by the Government of Israel of Palestinian land and restrictions on access to and control over natural resources, including water, which impede the development of the Palestinian economy; restrictions on the freedom of movement of Palestinians in the West Bank, including East Jerusalem; the lack of access to effective legal remedies; and the implementation of collective punishment measures such as punitive demolitions.

V. Settlements in the occupied Syrian Golan

58. Settlement expansion and land appropriation by the Government of Israel in the occupied Syrian Golan continued in direct violation of international law. In October 2016, the Government reportedly approved the construction of 1,600 new homes in the illegal settlement of Katzrin.[80] As noted in previous reports, Israeli settlements in the Golan are encouraged through financial incentives and a disproportionate allocation of water resources, contributing to a higher agricultural yield for settlers.[81] The Government is also reportedly seeking to appropriate approximately 20,000 acres of occupied land to create Hermon national park. The land in question is currently used for agriculture and housing by the inhabitants of the nearby Syrian towns of Majdal Shams and Ein Qynia.[82] The appropriation of the land would severely restrict the development and expansion of the town of Majdal Shams.[83]

59. The Israeli authorities reportedly demolished a home in the Syrian Golan for the first time on 7 September 2016. The house was in the village of Majdal Shams and it was demolished on the basis that it had been built without the necessary permit.[84] Discriminatory land, housing and development policies established by the Israeli authorities have made it difficult for Syrians to obtain building permits, with the result that Syrian towns and villages are increasingly overcrowded.[85] The human rights organization Al-Marsad reported that a number of Syrian homeowners had received demolition notices; the organization expressed concern that the first demolition could mark the beginning of a new policy of home demolitions.[86]

60. Of further concern are reiterations by senior Israeli government officials, including the Prime Minister, during 2016 that Israel would never give up its claim to the Golan Heights. The Secretary-General has repeatedly reaffirmed the continuing validity of Security Council resolution 497 (1981), in which the Council decided that the Israeli

[78] Approximately 170 European Union humanitarian structures were demolished between 2009 and mid-2016, of which 91 were demolished in the first six months of 2016. See www.haaretz.com/israel-news/1.733729 and www.unrwa.org/newsroom/official-statements/un-officials-call-immediate-revocation-plans-transfer-palestinian.

[79] See www.btselem.org/jerusalem/revocation_of_residency.

[80] See www.timesofisrael.com/liveblog_entry/israel-okays-1600-new-homes-in-golan-heights.

[81] See A/HRC/28/44, para. 54, and A/HRC/31/43, para. 64.

[82] See http://golan-marsad.org/al-marsad-calls-on-international-community-to-act.

[83] See http://golan-marsad.org/press-release-al-marsad-submits-objection-to-hermon-national-park-plan.

[84] See http://golan-marsad.org/press-release-israeli-authorities-demolish-home-in-majdal-shams-in-the-occupied-syrian-golan/

[85] Ibid.

[86] Ibid.

decision to impose its laws, jurisdiction and administration in the occupied Syrian Golan Heights was null and void and without international legal effect.

VI. Conclusions and recommendations

61. Israeli settlement activity is incompatible with the obligations of Israel under international law. Settlement activity is a key driver of need for humanitarian assistance in the West Bank, including East Jerusalem, and lies at the core of a range of human rights violations. Israeli settlement activity further constitutes one of the main obstacles to a viable Palestinian State. The significant role that the production of and trade in settlement goods plays in helping to support and maintain settlements is also of concern.

62. Israel must implement all relevant United Nations resolutions, including Security Council resolution 497 (1981), and withdraw from territory it has occupied since 1967. To meet its obligations under international law, Israel must stop building settlements, reverse any settlement development activity and make full reparations to the individuals and communities concerned.[87]

63. Within the scope of its obligation to respect and ensure respect for human rights within the Occupied Palestinian Territory, the Government of Israel has the duty to protect the Palestinian population against human rights abuses by third parties, including business enterprises. It should implement the Guiding Principles on Business and Human Rights and, in particular, take the legislative, administrative policy and remedial actions necessary to prevent, investigate, punish and redress abuses. The Israeli authorities must rescind all policies and practices that, directly or indirectly, are likely to lead to the forcible transfer of Palestinians, including policies and practices that contribute to the creation of a coercive environment that forces people to leave their communities. Specifically, the Israeli authorities must:

(a) Refrain from any initiative to relocate communities from Area C in contravention of international law;

(b) Cease the implementation of a planning and zoning regime that is discriminatory and restrictive and that facilitates the construction and expansion of settlements and the wall, in violation of international law;

(c) Cease the demolition of the homes and private property of Palestinians and take all measures to prevent violence and other coercive measures perpetrated by public officials or settlers;

(d) Ensure that any incident of violence by private actors, including settlers, against Palestinians and their property are investigated, that perpetrators are prosecuted and, if convicted, punished with appropriate sanctions, and that victims are provided with effective remedies in accordance with international standards.[88]

64. Third States should provide guidance on implementing the Guiding Principles on Business and Human Rights to business enterprises domiciled in their territory or within their jurisdiction that operate in conflict-affected areas, including in the context of military occupation, such as in the Occupied Palestinian Territory.

65. Business enterprises should undertake human rights due diligence in order to identify, prevent, mitigate and account for how they address any adverse human rights impact on Palestinians they may cause or contribute to, or which may be directly linked to their operations, products or services.

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[87] Draft articles 30 and 31 of the draft articles on responsibility of States for internationally wrongful acts, see *Yearbook of the International Law Commission 2001*, vol. II (Part Two), p. 28.

[88] See CCPR/C/ISR/CO/4, para. 16.